

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**  
**August 29, 2002**

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of the  
Telecommunications Act of 1996*

Docket No. 97-00309

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**ORDER APPROVING SETTLEMENT AGREEMENT**

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This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Pat Miller, of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, during a Hearing that was continued from August 6 to August 7, 2002, for consideration of the Settlement Agreement entered into by the parties in this docket.

**Background**

On April 26, 2002 BellSouth submitted its third Section 271 filing to the Authority in this docket.<sup>1</sup> On May 8, 2002, Director Melvin Malone, serving as Pre-Hearing Officer, issued a Notice establishing a procedural schedule.<sup>2</sup> The parties proceeded with discovery pursuant to that Notice. On May 23, 2002, Pre-Hearing Officer

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<sup>1</sup> See 47 U.S.C. § 271.

<sup>2</sup> The terms of the former Directors of the Authority, Chairman Sara Kyle, and Directors H. Lynn Greer, Jr. and Melvin J. Malone, expired on June 30, 2002. Chairman Kyle was reappointed and commenced a new term as a Director of the Authority on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle and Directors Deborah Taylor Tate and Pat Miller was randomly selected and assigned to Docket No. 97-00309.

Malone issued another Notice directing the parties to reserve August 5 - 9, 2002 for the Hearing on the merits in this docket.

At a regularly scheduled Authority Conference held on July 23, 2002, the panel of Directors assigned to this docket voted unanimously to appoint Director Deborah Taylor Tate to act as Pre-Hearing Officer to prepare the docket for a hearing. A Pre-Hearing Conference was held on July 30, 2002. At the suggestion of the Pre-Hearing Officer, the parties initiated settlement negotiations. On July 30, 2002, the Pre-Hearing Officer issued a Notice informing the parties that the Hearing on the merits would commence on August 6, 2002. Immediately prior to the commencement of the Hearing, a Pre-Hearing Conference was convened on August 6 for the parties to report on the status of the settlement negotiations. At that time, the parties informed the Pre-Hearing Officer that the settlement negotiations were ongoing and requested additional time to continue with the negotiations. On August 7, 2002, the parties informed the Pre-Hearing Officer that they had reached a settlement agreement that would resolve matters of proof relating to the outstanding issues in this docket.

#### **August 7, 2002 Hearing and Authority Conference**

Immediately following the Pre-Hearing Conference on August 7, 2002, the Hearing in this matter was convened. Thereafter, Pre-Hearing Officer Tate informed the panel assigned to this docket that the parties had reached a proposed Settlement Agreement (attached hereto as Exhibit A). The parties then presented to the panel a summary of the Settlement Agreement and an explanation regarding how it affected this

docket and two other dockets: Docket No. 01-00362<sup>3</sup> and Docket No. 01-00193.<sup>4</sup> The parties also informed the panel that a number of the parties in this docket, Docket No. 97-00309, had agreed to the Settlement Agreement, and those parties that did not join in the Settlement Agreement had either withdrawn from the proceedings or concurred in the parties' agreement to submit the case to the panel for a decision based on the current record without conducting the previously scheduled evidentiary Hearing.

BellSouth summarized the Settlement Agreement for the panel as follows. With regard to Docket No. 97-00309, the parties proposed that the record should be closed as of July 31, 2002 and the case be submitted to the Directors for resolution based on that record. The parties agreed that no additional testimony, argument, briefs or opposition would be filed in the docket. The parties requested that the TRA publicly deliberate Docket No. 97-00309 on August 26, 2002.

As to Docket No. 01-00362, the parties agreed that they would ask the TRA to administratively close the docket. In addition, the parties proposed that the closing of the docket would not prevent any party from filing a complaint with the TRA regarding BellSouth's Operational Support System ("OSS").<sup>5</sup> The parties requested that the TRA provide expedited treatment to such complaints. The parties agreed, however, that no such complaints would be filed prior to the entry of an order by the TRA reflecting the TRA's decision in Docket No. 97-00309.

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<sup>3</sup> *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, Docket No. 01-00362.

<sup>4</sup> *Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, Docket No. 01-00193.

<sup>5</sup> "[T]he term OSS refers to the computer systems, databases, and personnel that incumbent carriers rely upon to discharge many internal functions necessary to provide service to their customers." *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, FCC Docket No. 98-72, CC Docket No. 98-56; 13 FCC Rcd. 12,817 (released April 17, 1998) (*Notice of Proposed Rulemaking*) ¶9.

With regard to Docket No. 01-00193, the parties requested that the Authority adopt, as the Tennessee Performance Assurance Plan, the service quality measurements and self-effectuating enforcement mechanisms adopted by the Florida Public Service Commission on February 14, 2002, as they presently exist and are modified in the future. Under the Settlement Agreement, the Florida plan would be effectuated no later than December 1, 2002. The parties agreed not to seek amendments to the plan until December 1, 2003, after which the TRA at its discretion may conduct a review of the plan and the parties are free to recommend modifications. The parties agreed that in the interim prior to December 1, 2002 BellSouth may implement the Georgia Performance Plan and self-effectuating enforcement mechanisms. The parties also proposed that the TRA adopt the Tennessee performance measurements for special access that were included as Attachment B to the *Amended Final Order Granting Reconsideration and Clarification and Setting Performance Measurements, Benchmarks and Enforcement Mechanisms* issued on June 28, 2002. The parties agreed that if the Federal Communications Commission ("FCC") implements national standards, no party is estopped from requesting the TRA to supplant the performance standards in Attachment B with the FCC standards.

The parties also agreed that the competitive local exchange carriers ("CLECs") that are parties to Docket No. 97-00309 may request, via the filing of a complaint, that the TRA open a generic contested proceeding to address the provision of BellSouth's DSL service to CLEC voice customers and related OSS issues.<sup>6</sup> The parties agreed that

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<sup>6</sup> DSL is an acronym for digital subscriber line, a developing technology that uses ordinary copper telephone lines to deliver high-speed information, including audio, video and text.

BellSouth could raise any and all defenses to the CLECs' complaints. BellSouth agreed not to oppose expedited treatment of such complaints.

Finally, as a condition to the TRA's acceptance of the Settlement Agreement, the parties will not comment in the FCC proceeding on the fact that the TRA will not conduct further Hearings in Docket No. 97-00309 and will not raise this as a criticism of the TRA's recommendation to the FCC regarding BellSouth's § 271 application.

After BellSouth finished presenting this summary of the Settlement Agreement, BellSouth, Birch Telecom of the South, Inc., Ernest Communications, Inc., ITC DeltaCom, Inc., MCI WorldCom Communications, Inc., and its subsidiaries, MCImetro Access Services, Inc. and Brooks Fiber Communications of Tennessee, Inc., DIECA d/b/a Covad Communications, Inc. and Time Warner Telecom of the MidSouth, LP orally agreed on the record to the terms of the Settlement Agreement. The Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter stated that while said Division was not a signatory, it is supportive of the Settlement Agreement. On the signature pages of the Settlement Agreement, XO Tennessee, Inc., Intermedia Communications, Inc., Southeastern Communications Carriers Association, ICG Telecom Group, Inc., US LEC of Tennessee, Inc. and American Communications Services, Inc. indicated that they had withdrawn from this proceeding. AT&T Communications of the South Central States, KMC Telecom III, Inc. and KMC Telecom IV, Inc. signed a separate document stating that they were not parties to the Settlement Agreement, but agreed that this matter be submitted to the Authority on the current record without further submissions or hearings.

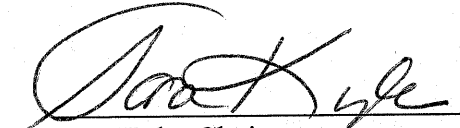
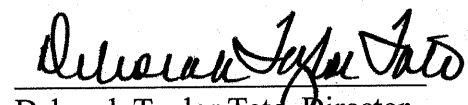
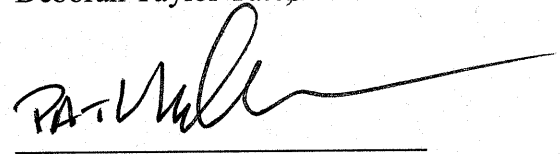
After considering the parties' statements, the panel in Docket No. 97-00309 unanimously voted to approve the Settlement Agreement on the condition that the panels in Docket No. 01-00362 and Docket No. 01-00193 accepted and approved those portions of the Settlement Agreement affecting those respective dockets. Shortly thereafter, the regularly scheduled Authority Conference that was continued from August 5 to August 7, 2002 reconvened and the panels in Docket No. 01-00193 and Docket No. 01-00362 both unanimously voted to accept the Settlement Agreement.

The panel in Docket No. 97-00309 then reconvened. After ascertaining that the respective panels in Docket No. 01-00193 and Docket No. 01-00362 had unanimously voted to accept the Settlement Agreement, the panel in Docket No. 97-00309 unanimously voted to accept the Settlement Agreement and to reconvene on August 26, 2002 to deliberate the merits of the issues raised in this docket.

**IT IS THEREFORE ORDERED THAT:**

1. The Settlement Agreement entered into by the parties in Docket No. 97-00309 and attached hereto as Exhibit A is accepted and approved.
2. Docket No. 97-00309 shall be reconvened on August 26, 2002 to deliberate the issues raised in this docket. The record for consideration in this docket shall be comprised of documents filed on or before July 31, 2002.

3. Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Tenn. Comp. R. & Reg 1220-1-2-.20 within fifteen (15) days of the entry of this Order.

  
Sara Kyle, Chairman  
Deborah Taylor Tate, Director  
Pat Miller, Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of  
the Telecommunications Act of 1996*

Docket No. 97-00309

SETTLEMENT AGREEMENT

In Docket No. 97-00309, the undersigned parties and BellSouth agree to the following:

1. The record in Docket No. 97-00309 will be closed as of July 31, 2002. No party will submit any further testimony, documentary evidence, argument, briefs, or opposition in this docket for consideration of the Tennessee Regulatory Authority. All of the parties agree to submit this case to the Directors for consideration and determination on its merits based on the existing record. The parties request that the Authority hold its public deliberations at a special session on August 26, 2002.

The parties agree that ~~Docket No. 01-00362 shall remain open for issues related to the~~ should be closed but the undersigned parties agree that this will not prevent any party performance of BellSouth's operational support systems. This docket from filing a complaint with the TRA ~~regarding~~ regarding BellSouth's OSS and in such case all parties will urge the TRA U.S.C. §271(c). No party shall file any complaint in Docket No. 01-00362 prior to entry of an order by the TRA reflecting the TRA's ~~complaint~~ such on an expedited basis

EXHIBIT

A



decision whether or not to recommend approval of BellSouth's 271 application.

3. In resolution of the contested issues in Docket 01-00193, the parties will request the Authority to adopt as the "Tennessee Performance Assurance Plan" the identical service quality measurement plan and self-effectuating enforcement mechanism adopted by the Florida Public Service Commission in Docket No. 000121-TP on February 14, 2002, as it exists today and as it may be modified in the future, plus the Tennessee Performance Measurements for Special Access contained in the Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms issued in this docket on June 28, 2002, as set forth in exhibit B to that order. If the FCC adopts national special access measurements, the parties reserve the right to argue to the TRA as to whether the FCC measures should supercede the Tennessee Measurements. The parties agree that the "Tennessee Performance Assurance Plan" will become effective no later than December 1, 2002. The parties further agree that until the "Tennessee Performance Assurance Plan" is implemented, BellSouth can use, on an interim basis, the "Georgia Performance Plan" approved by the FCC in BellSouth's Georgia/Louisiana 271 application. The parties agree that the "Tennessee Performance Assurance Plan," as defined above, shall continue until at least December 1, 2003, at

which time the Authority at its discretion may conduct a review of the then-existing plan, accept recommendations from interested parties, and make any appropriate modifications.

4. The CLECs may request that the TRA open a generic contested case proceeding to address expeditiously the issue of BellSouth's provision of DSL service to CLEC voice customers and related OSS issues. BellSouth may raise any and all defenses to such complaint. Bellsouth will not oppose expedited treatment of such complaint.
5. This agreement is solely for the purpose of settling this docket in Tennessee. Nothing in this agreement restricts the right of any party to take a contrary position in any other forum. The intervening parties and BellSouth agree that the fact that this case was resolved without further hearings will not be used as a basis for opposing Bellsouth's Tennessee 271 application at the FCC or for criticizing the TRA's recommendation of BellSouth's 271 application at the FCC. In the event that the TRA declines to act consistently with any portion of this agreement, then the agreement shall be void and shall in no manner be binding upon any party to this agreement.

BELLSOUTH TELECOMMUNICA-  
TIONS, INC.

By: [Signature]

Its: General Counsel - TN

~~XO TENNESSEE, INC.~~

By: [Signature]

Its: ally

TIME WARNER TELECOM OF THE  
MID-SOUTH, LP; NEW SOUTH  
COMMUNICATIONS CORP.

By: [Signature]

Its: Attorney

MCI WORLDCOM, INC.; MCI metro  
ACCESS TRANSMISSION SERVICES,  
LLC; BROOKS FIBER COMMUNI-  
CATIONS OF TENNESSEE, INC.

By: [Signature]

Its: Attorney

INTERMEDIA COMMUNICATIONS,  
INC.

By: [Signature]

Its: ally

DIECA d/b/a COVAD COMMUNICA-  
TIONS COMPANY

By: William H. Weber

Its: VICE PRESIDENT, EXTERNAL AFFAIRS

ICG TELECOM GROUP, INC.

By: [Signature]

Its: \_\_\_\_\_

SOUTHEASTERN COMPETITIVE  
CARRIERS ASSOCIATION

By: [Signature]

Its: ally

SPRINT COMMUNICATIONS, LP

NOT PRESENT  
DURING HEARING  
DATES

By: \_\_\_\_\_

Its: \_\_\_\_\_

QWEST f/k/a LCI INTERNATIONAL  
TELECOM CORP.

By: JUST MONITORING

Its: H. AD B. [Signature]

BELLSOUTH LONG DISTANCE, INC.

KMC TELECOM III, INC.;  
KMC TELECOM IV, INC.

NOT PARTY TO AGREEMENT;  
SEE STATEMENT IN  
RECORD + PAGE 7  
OF THIS AGREEMENT

By: Hank Anthony [Signature]

Its: General Counsel

By: \_\_\_\_\_

Its: H. AD B. [Signature]

COMMUNICATIONS WORKERS OF  
AMERICA

NOT PRESENT DURING  
HEARING DATES

By: \_\_\_\_\_

Its: \_\_\_\_\_

SBC TELECOM

By: Just monitoring

Its: \_\_\_\_\_

ASSOCIATION OF COMMUNICA-  
TIONS ENTERPRISES

NOT PRESENT  
DURING  
HEARING DATES

By: \_\_\_\_\_

Its: \_\_\_\_\_

ITC^DELTACOM

By: [Signature]

Its: [Signature]

US LEC OF TENNESSEE, INC.

~~Withdrawn~~

By: Thy Wal  
Its: attorney

AMERICAN COMMUNICATIONS  
SERVICES, INC.

~~Withdrawn~~

By: Thy Wal  
Its: attorney

BIRCH TELECOM OF THE SOUTH,  
INC.

By: Thy Wal

Its: attorney

ERNEST COMMUNICATIONS, INC.

By: Thy Wal

Its: attorney

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of  
the Telecommunications Act of 1996*

Docket No. 97-00309

AT&T is not a party to this agreement, but AT&T will agree that this matter  
may be submitted to the Authority on the current record without further  
submissions or hearings.

AGREED TO:

AT&T COMMUNICATIONS OF THE SOUTH  
CENTRAL STATES, LLC; TCG MIDSOUTH,  
INC.

By: MA [Signature]

Its: Counsel

KMC TELCOM TAKES THE SAME POSITION AS AT&T.  
KMC TELCOM III, INC. +  
KMC TELCOM IV, INC.

by: H. [Signature]  
ITS COUNSEL